

**IN RESPONSE TO THE OFFICE ACTION:**

**REMARKS:**

Applicant traverses the rejection of claims 1–14, 16–28, and 30–33. Examiner previously indicated claims 15–19, 29, 30, and 32 were allowable if rewritten in independent form. Applicant relied on Examiner’s previous position amending independent claims 1 and 20 to incorporate limitations previously contained in now cancelled claims 15 and 29. Applicant notes that “[g]reat care should be exercised” when rejecting a previously allowed claim. MPEP § 706.04. Although claims 15–19, 29, 30, and 32 had been objected to and were not previously allowed, the “great care” standard is still applicable, as Examiner had deemed the claims allowable if rewritten in independent form. The remarks below indicate why Examiner’s present position is improper.

**REMARKS REGARDING CLAIM AMENDMENTS:**

Claims 1–14, 16–28, and 30–33 remain in this application. Claims 1 and 20 have been amended so that the scope and language of the claims is clearer and more precise in defining what the Applicant considers to be the invention. Support for the above amendments can be found at least in the original specification, claims, and drawing as no new matter has been added. Applicant respectfully submits that the claims as amended are clearly distinct and patentable over the prior art of record and therefore respectfully request that the Examiner enter these requested amendments and all claims be allowed.

**FIRST REJECTION UNDER 35 U.S.C. § 103(a):**

Claims 1–4, 7–14, 16–24, 26–28, and 30–33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,483,441 to Scofield (“Scofield”) in view of

WO99/76731 to Doyle ("Doyle"). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The fundamental basis for an obviousness determination under 35 U.S.C. §103(a) was set forth by the Supreme Court in *Graham v. John Deere Co.*, 383 US 1; 148 U.S.P.Q. 459 (1966). In subsequent cases involving a determination of obviousness under 35 U.S.C. §103, the Federal Circuit has noted that the following basic tenets of patent law must be adhered to: 1) the claimed invention must be considered as a whole; 2) the references must be considered as a whole and must suggest the desirability and, thus, the obviousness of making the combination; 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and 4) reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187, n.5 (Fed. Cir. 1986). All of the claim limitations must be taught in order to establish obviousness. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As noted above, the references must be considered as a whole and must suggest the desirability and, thus, the obviousness of making the combination. Further, all of the claim limitations must be taught in order to establish obviousness. Amended claims 1 and 20 require that the animal be substantially stationary during the time the actual measurement is being taken. To the contrary, Scofield discloses a system to evaluate an animal based on visual images while the animal is moving through a chute. In fact, the Scofield system requires the animal to move down a chute as the system takes two measurements at different points along the chute. Further, Scofield notes, "various height and width measurements of an animal can be obtained from the contemporaneous scene image representations made **as the animal moves** through the chute." (Scofield col. 5, ll. 62-64 Emphasis Added.) Thus, Scofield does not disclose, teach, or suggest the claimed invention as Scofield relates to measuring the animal as it moves through a chute.

Additionally, it is improper for the Examiner to combine Doyle with Scofield due to this teaching. The measuring system disclosed in Doyle "is adapted to be fitted to known animal handling facilities such as **holding** chutes and/or animal crushes." (Doyle col. 5, ll. 28-30 Emphasis added.) A crush is a device designed to hold an animal stationary. The fact that Doyle discloses a system for measuring a stationary animal is further evidence that when measuring an

animal while in a crush a pressure sensor may be used to trigger the transducer; the pressure sensor indicates when the animal was being firmly held, and thus not in motion. (Doyle col. 8, ll. 34–36.)

Because Scofield discloses a system for measuring an animal while moving down a chute, it does not suggest the combination with the ultrasound transducer of Doyle, which is used to measure stationary animals. This is further evidenced by the disclosure of ultrasound transducers in Scofield, which is used to detect when an animal enters and exits the chute, *i.e.* movement of the animal. Even though Scofield was obviously familiar with ultrasound transducers, Scofield does not utilize such a transducer to make physiological measurements of the animal. Instead, Scofield requires capturing a visual image on video of the animal in two different scenes made possible by the movement of the animal. For at least these reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claims 1 and 20.

Claims 2–4, 7–14, 16–19, 21–24, 26–28, and 30–33 depend from claims 1 and 20 and thus, incorporate each limitation therein. Therefore, claims 2–4, 7–14, 16–19, 21–24, 26–28, and 30–33 are allowable for at least the same reason as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2–4, 7–14, 16–19, 21–24, 26–28, and 30–33.

SECOND REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1–3, 7–13, 20–23, and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 4,939,574 to Petersen et al. (“Petersen”) in view of Doyle. Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 USC §103(a) has been discussed above in the response to the first rejection under 35 USC §103(a). In the interests of brevity, Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

Peterson discloses a system for measuring certain aspects of a carcass, such as fat content and does not appear to be used to monitor growth of live animals. As discussed above,

independent claims 1 and 20 require that “the **animal** is substantially stationary.” (Emphasis added.) Peterson discloses a system for measuring a carcass, not a substantially stationary animal. Thus, Peterson does not disclose, teach, or suggest the invention claimed in independent claims 1 and 20 and is directed to evaluating only carcasses.

Doyle teaches the use of an ultrasound transducer to measure the height of a portion of a stationary, live animal standing in a holding chute. The transducer in Doyle is generally directed to the pelvis area of the animal while it is standing and is used to measure the pelvic height of the animal. The height history is used to determine the growth of the animal and is a factor in determining the optimal time to slaughter the animal. Peterson deals with carcasses, which are hung in front of a dark background and a video picture is taken. However, Peterson deals with measuring the carcass for characteristics such as fat content that would not be determined from measuring the height of the already slaughtered animal. Further, the carcass cannot stand on its own thus, the transducer disclosed in Doyle would not measure its height. Independent claims 1 and 20 both require determining the approximate height of a portion of the substantially stationary animal. Thus, as the Peterson system deals with measuring carcasses instead of live animals, it does not suggest the claimed combination with the ultrasound transducers of Doyle. For at least these reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claims 1 and 20.

Claims 2–3, 7–13, 21–23, and 25 depend from claims 1 and 20 and thus, incorporate each limitation therein. Therefore, claims 2–3, 7–13, 21–23, and 25 are allowable for at least the same reason as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2–3, 7–13, 21–23, and 25.

THIRD REJECTION UNDER 35 U.S.C. § 103(a):

Claim 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Petersen in view of U.S. Patent 6,639,352 to Eom (“Eom”). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 USC §103(a) has been discussed above in the response to the first rejection under 35 USC §103(a). In the interests of brevity,

Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

As discussed above, the combination of Peterson and Doyle is improper. As such, independent claim 1 is not disclosed, taught, or suggested by Petersen. Eom also does not disclose, teach, or suggest the invention of independent claim 1. Claims 5 and 6 each depends from independent claim 1 and thus necessarily incorporates each limitation therein. Therefore, claims 5 and 6 are allowable for at least the same reasons as independent claim 1. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 5 and 6.

FOURTH REJECTION UNDER 35 U.S.C. § 103(a):

Claims 14 and 33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Petersen in view of U.S. Patent 4,785,817 to Stouffer ("Stouffer"). Applicant requests that the Examiner reconsider and withdraw the above rejections in view of the following remarks.

The applicable case law for a rejection under 35 USC §103(a) has been discussed above in the response to the first rejection under 35 USC §103(a). In the interests of brevity, Applicant requests the Examiner to note the above section and consider that material incorporated herein by reference.

As discussed above, the combination of Peterson and Doyle is improper. As such, independent claims 1 and 20 are not disclosed, taught, or suggested by Petersen. Stouffer also does not disclose, teach, or suggest the invention of independent claims 1 and 20. Claims 14 and 33 depend from independent claims 1 and 20, and thus necessarily incorporate each limitation therein. Therefore, claims 14 and 33 are allowable for at least the same reasons as independent claims 1 and 20. Applicant therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 14 and 33.

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For at least the reasons presented above, Applicant respectfully requests that the rejection of claims 1–14, 16–28, and 30–41 be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

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Applicant invites the Examiner to contact the undersigned attorney by telephone to discuss any issues or questions presented by this paper.

Respectfully submitted,



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